

Appl. No. 09/913,416
Amdt. dated January 9, 2004
Reply to Office Action of October 21, 2003

REMARKS/ARGUMENT

This amendment responds to the Office Action of October 21, 2003.

Claims 2, 7-20, and 22-27 are pending in the application with claims 1, 3-6 and 21 having been canceled, claims 2, 7-13, 17, 19, 20, and 24-26 having been amended, and new claim 27 added.

Claim 6 has been allowed. Claim 6 has been re-presented as new independent claim 27 incorporating the features of canceled claim 1, upon which it was dependent. It is thus submitted that claim 27 is allowable.

Claim 13 is dependent upon claim 27. It is thus submitted that it, too, is allowable.

Claim 25 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as their invention. The Examiner has requested that the Applicants draft the claim as a product by process claim depending from claim 20. This has been done. Accordingly, it is requested that the rejection of claim 25 under 35 U.S.C. 112, second paragraph, be withdrawn.

Claims 1-5, 17-19, 24, and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/33381.

Claims 7-16 and 22-26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/33381 in combination with Orman et al. (U.S. Patent No. 4,990,351).

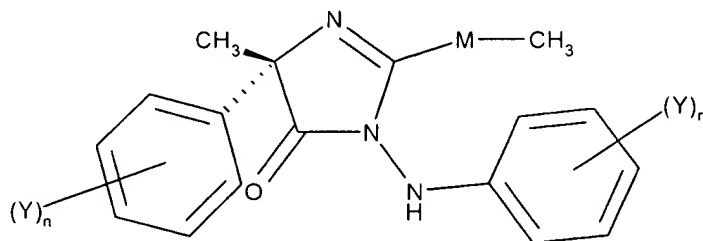
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WO 98/33381 discloses combinations comprising (1) at least one quinazolinone of a specified formula, N-oxides and agriculturally suitable salts thereof and (2) at least one compound selected from (a) compounds acting at the bc₁ complex of the fungal mitochondrial respiratory electron transfer site and (b) compounds that control fungal disease sterol biosynthesis.

Orman et al. disclose a method for treating fresh fruit to prevent and retard the growth of fungus. The techniques include simultaneously scrubbing the fresh fruit while drenching with a falling liquid containing a fungicide. Large volumes of liquid are used and the liquid can be recycled. The liquid also removes dirt and debris and, while containing a rather small amount of fungicide, such amount is present in a concentration sufficient to apply a coating to the fruit at the end of the scrubbing step given proper pH control. The pH of the solution is controlled. During the scrubbing step, the fruit is continuously rotated to provide even fungicidal deposit.

As amended, the claims of the present application are directed to fungicide compositions comprising:

- a) a fungicide compound of general formula (I):



in which:

- M represents an oxygen or sulphur atom;
- n is an integer equal to 0 or 1;
- Y is a fluorine or chlorine atom, or a methyl radical; and

b) imazalil;

and to a method for treating fruits, characterized in that the fruits are treated with the above-described fungicide composition by immersion, spraying, brushing, coating or film-coating of the said fruits.

Formula (I) above describes a very limited number of compounds, including fenamidone, and thus the claims are directed to a small number of combinations of such compounds with imazalil. The Examiner has acknowledged that the combination of fenamidone and imazalil is free of the prior art. It is submitted that the somewhat larger group of combinations within the scope Formula (I) compounds and imazalil is neither disclosed nor suggested by such art, in particular WO 98/33381.


Further, it is submitted that Orman et al. fail to supplement this deficiency of WO 98/33381 in that it only describes certain methods that could, theoretically, be used by the present Applicants to apply the fungicidal composition of their invention to fruit. There is no disclosure or suggestion in Orman et al. of the fungicidal composition itself.

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Accordingly, it is requested that the rejections under 35 U.S.C. 103(a) of claims 1-5, 17-19, 24, and 25 as being unpatentable over WO 98/33381 and claims 7-16 and 22-26 as being unpatentable over WO 98/33381 in combination with Orman et al. be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance and an early Office Action to that end is earnestly solicited.

Respectfully submitted,



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